

April 25, 2012

VIA ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Room TWA325
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation
CG Docket No. 02-278**

Dear Ms. Dortch:

On Monday, April 23, Gina Ronzello, Vice President of Legislative Policy for the Cargo Airline Association (“CAA”); CAA member representative Bill Brown; and Mark Brennan and the undersigned of Hogan Lovells US LLP, Counsel to CAA, met with Kris Monteith, Mark Stone, Kurt Schroeder, Mike Jacobs, and Karen Johnson of the Commission’s Consumer and Governmental Affairs Bureau.

During the meeting, the representatives discussed issues related to the Telephone Consumer Protection Act (“TCPA”) and CAA members’ need to notify package recipients of scheduled deliveries or failed attempts to deliver specific packages, as described in more detail in the attached outline circulated at the meeting. The representatives encouraged the Commission to clarify that prior express consent to receive autodialed or prerecorded calls and messages (including text messages) can be provided through an intermediary or associated party for non-telemarketing calls. Specifically, the Commission should confirm that delivery companies can rely on representations from the package sender that the package recipient consents to receiving autodialed or prerecorded delivery notifications (e.g., when the sender provides a recipient’s wireless telephone number for the package).

Pursuant to Section 1.1206(b) of the Commission’s rules, I am filing this notice electronically in the above-referenced docket. Please contact me directly with any questions.

Respectfully submitted,

/s/ Michele C. Farquhar

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Outline for FCC Meeting

1. Introduction: Brief background on CAA and scope of members' businesses / overview of concerns arising under the TCPA

- A. CAA is the nationwide trade organization representing the interests of the U.S. all-cargo air transportation industry; CAA members transport approximately 85% of domestic Revenue Ton Miles and sort and deliver millions of packages nightly
- B. Problem: CAA members need to notify package recipients of scheduled deliveries or failed attempts to deliver specific packages; these calls and messages would merely provide an informational customer service with no solicitation or product marketing, but they are being constrained by regulatory uncertainty and the threat of class action TCPA lawsuits
- C. Solution: The recently filed GroupMe, Inc. ("GroupMe") Petition for Expedited Declaratory Ruling and Clarification ("Petition") provides an excellent vehicle for the FCC to confirm that consent to receive non-telemarketing informational calls or text messages may be provided through an intermediary or associated party

2. CAA Participation: CAA has a substantial interest in – and has been an active participant in – the FCC's TCPA proceedings

- A. CAA filed Reply Comments in the *Robocall* TCPA rulemaking
- B. CAA filed Comments in the Global Tel*Link TCPA petition proceeding
- C. CAA met with CGB staff to encourage resolution of the problem as part of the *Robocall* or Global Tel*Link proceedings

3. GroupMe TCPA Petition: The FCC should confirm that in certain limited circumstances, prior express consent to receive autodialed or prerecorded calls and messages (including text messages) on wireless telephones can be provided through an intermediary or associated party for *non-telemarketing* informational calls

- A. Specifically, the FCC should confirm that delivery companies can rely on representations from the package sender that the package recipient consents to receiving autodialed or prerecorded delivery notifications (e.g., when the sender provides a recipient's wireless telephone number for the package)
 - i. In the CAA context, there is a relationship between the call recipient and the package sender on whose behalf the notification call is made; the package sender is effectively acting as an intermediary or associated party for the customer or intended package recipient consistent with the flow of goods within the supply chain
 - ii. By giving the sender a contact telephone number, the recipient has authorized calls to that number, whether by the shipper or any other member of the supply chain (e.g., other parties that facilitate delivery)
- B. As GroupMe explains in its Petition, there are limited instances where only an intermediary is able to provide the consent, on behalf of the call recipient
- C. The FCC has long recognized the importance of a business's ability to engage in "normal business communications" using telephone numbers that have been provided for that purpose
- D. The FCC has also recognized that a party that obtains consent to make an automated call can transfer that consent to an associated party (*ACA International* and *State Farm Insurance Orders*)
- E. The FCC's recent *Robocall Report and Order* highlighted the benefits of informational calls to wireless telephone numbers, and the FCC stated that it did not want to "impede" or "unnecessarily restrict" these "highly desirable" calls